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Gina Harrison
Senior Counsel and Director
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March 19, 1999

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, S.W.
Washington, D.C. 20554

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MAR 19 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Notice of Ex Parte Meeting, Number
Portability Cost Recovery, CC Docket
No. 95-116

Dear Ms. Salas:

Yesterday, David Cohen, Vice President, Small Company Affairs, and John Hunter, Senior Counsel, both of United States Telephone Association, Margot Smiley Humphrey, Esq., of Koteen and Naftalin, on behalf of National Rural Telecom Association, Jill Canfield, Regulatory Counsel, National Telephone Cooperative Association, Kathleen A. Kaercher, General Counsel, and Stuart Polikoff, Director of Government Relations, both of the Organization for the Promotion and Advancement of Small Telecommunications Companies, and I met with Yog Varma, Deputy Chief, Common Carrier Bureau, to discuss issues which are summarized in the attached Petition for Expedited Interim Waiver filed today. In addition, I briefly spoke with Kris Monteith, Deputy Chief, Competitive Pricing, about these same matters.

In accordance with Commission Rules, I am submitting two copies of this notice. Kindly stamp the additional return copy provided. Please direct any questions regarding this filing to me.

Sincerely,


Gina Harrison

Attachment
cc: Y. Varma
K. Monteith

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

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MAR 19 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
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Joint Petition of the National Exchange)
Carrier Association, Inc. (NECA), National)
Rural Telecom Association (NRTA),)
National Telephone Cooperative)
Association (NTCA), Organization)
for the Promotion and Advancement)
of Small Telecommunications Companies)
(OPASTCO), and United States)
Telephone Association (USTA))
for Expedited Interim)
Waiver of Section 52.33(a) of the)
Commission's Rules)

CC Docket No. 95-116

TO: The Common Carrier Bureau.

PETITION FOR EXPEDITED INTERIM WAIVER

The National Exchange Carrier Association, Inc. (NECA), National Rural Telecom Association (NRTA), National Telephone Cooperative Association (NTCA), Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), and United States Telephone Association (USTA), (collectively referred to as "Telephone Associations"), hereby request waiver of section 52.33(a) of the Commission's Rules.¹ Waiver of section 52.33(a), which relates to the recovery of local

¹ 47 C.F.R. § 52.33(a) states:

Incumbent local exchange carriers may recover their carrier-specific costs directly related to providing long-term number portability by establishing in tariffs filed with the Federal Communications Commission a monthly number-portability charge, as specified in subparagraph (a)(1), and a number portability query-service charge, as specified in subparagraph (a)(2).

- (1) The monthly number-portability charge may take effect no earlier than February 1, 1999, on a date the incumbent local exchange carrier selects, and may end no later than five years after that date.

number portability (LNP) costs, is required only to the extent that this rule can be read to prohibit incumbent local exchange carriers (ILECs) who are not obligated to provide LNP in specific serving areas (*i.e.*, "non-LNP-providing ILECs") from directly assigning their on-going carrier-specific LNP costs to the interstate jurisdiction for recovery via traffic sensitive (TS) interstate access charges.

I. Background

Under Commission rules implementing section 251(e) of the Telecommunications Act of 1996, all carriers incur costs for the provision of LNP regardless of whether they are currently required to provide LNP.

In particular, all ILECs are required to contribute to the cost of the regional Number Portability Administration Centers (NPACs) established pursuant to Commission orders in CC Docket No. 95-116.² More significantly, section 52.33 of the Commission's rules allows ILECs who provide LNP to assess number portability query-service charges upon carriers that terminate traffic in areas served by LNP-capable switches.³ Many ILECs that are not required to provide LNP have joint local calling

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- (i) An incumbent local exchange carrier may assess each end user it serves in the 100 largest metropolitan statistical areas, and each end user it serves from a number-portability-capable switch outside the 100 largest metropolitan statistical areas, . . .

- (2) The number portability query-service charge may recover only carrier-specific costs directly related to providing long-term number portability that the incumbent local exchange carrier incurs to provide long-term number portability query service to carriers on a prearranged and default basis.

² See 47 C.F.R. § 52.32. See also Telephone Number Portability, CC Docket No. 95-116, *Third Report and Order*, 13 FCC Rcd 11701 (1998) at ¶¶ 87-93 (*LNP Cost Recovery Order*).

³ For example, on a local call from a non-LNP providing ILEC's end-user customer, the non-LNP providing ILEC would be the N-1 carrier required to query the database. In most instances, larger ILECs will be providing the database query service, assessing charges on the non-LNP providing ILEC for this service.

agreements with carriers who are, or soon will be, providing number portability. In these instances, non-LNP-providing ILECs serve as the "N-1" carrier for all calls placed to NXXs served by the LNP-providing carrier, and incur usage-based charges for virtually all calls terminating in the neighboring ILEC's LNP-capable exchanges. Costs associated with these charges are expected to be substantial.

Newly-promulgated section 52.33(a) of the Commission's Rules permits ILECs who provide LNP to recover their carrier-specific LNP costs through a federally-tariffed monthly end-user charge beginning February 1, 1999.⁴ The rule makes plain, however, that these end-user charges may only be applied by ILECs serving end-users in the 100 largest metropolitan statistical areas (MSAs).⁵ Outside the 100 largest MSAs, the charge may be applied to end-users served from a LNP-capable switch.⁶

No apparent mechanism exists for recovery of LNP costs incurred by non-LNP-providing ILECs.⁷ The Commission's *LNP Cost Recovery Order* stated that, "recovery from end users should be designed so that end users generally receive the charges *only when and where they are reasonably able to begin receiving the direct benefits of long-term number portability*."⁸ Thus it is not clear how ILECs that do not provide service from an LNP-capable switch or who serve end-users outside the largest 100 MSAs will recover their ongoing LNP costs.

⁴ 47 C.F.R. § 52.33(a).

⁵ *Id.*

⁶ *Id.*

⁷ See CC Docket 95-116, NECA Expedited Petition for Reconsideration (filed July 29, 1998).

⁸ *LNP Cost Recovery Order* at ¶ 142 (emphasis added).

II. Waiver Request

The Telephone Associations therefor request that the Commission waive the requirements of section 52.33(a) of its rules. Waiver is needed to the extent that section 52.33(a) can be read to prohibit non-LNP-providing ILECs from directly assigning on-going LNP costs to the interstate jurisdiction for recovery via TS access charges. This type of recovery is consistent with the Commission's determination that LNP costs are wholly interstate.⁹ The requested waiver would be in effect on an interim basis, pending resolution of cost recovery issues raised in Petitions for Reconsideration of the Commission's *LNP Cost Recovery Order*.

Grant of the requested waiver would permit non-LNP-capable ILECs to recover their on-going LNP costs via TS access charges. Direct assignment of these costs for recovery via TS access charges provides a reasonable opportunity for non-LNP-providing ILECs to recover their LNP costs, while satisfying the Commission's policy against imposing end user charges on customers who do not receive the direct benefits of LNP.¹⁰ Allowing non-LNP-providing ILECs to recover their LNP costs in this manner is also consistent with the Act's requirement that LNP costs be recovered in a "competitively-neutral" manner, and will not unfairly burden the competitive position of interexchange carriers or other classes of customers.

⁹ See *LNP Cost Recovery Order* at ¶ 29.

¹⁰ See *Id.* at ¶ 142.

III. Conclusion

Good cause having been shown, the Telephone Associations respectfully request an interim Commission waiver or clarification of the requirements of section 52.33(a) of the Commission Rules, so as to allow non-LNP-providing ILECs to recover their LNP-related costs. Until the Commission develops a permanent cost-recovery mechanism for non-LNP-providing ILECs, the Commission should permit such companies to directly assign their LNP-related costs to the interstate jurisdiction for recovery via interstate TS access charges.

Respectfully submitted,

March 19, 1999

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